THE HON'BLE SRI JUSTICE P.S. NARAYANA

Writ Petition No.1204 of 2006

ORDER :

Heard the learned counsel.

The writ petition is filed praying for a Writ, Order, or direction, more in the nature of the writ of Certiorari calling for the records relating to the impugned rejection order vide No.112/1148/97-FF(HC)(A)-1, dated 04-01-2006 issued by the respondent No.1 and quash the same by declaring that the petitioner is entitled for grant of freedom fighters pension on par with similarly situated persons with all consequential arrears with effect from 04-07-2005, the date on which the preliminary sanction proceedings was issued and pass such other orders.

It is stated that the petitioner submitted an application before the first respondent for grant of Freedom Fighters Pension by enclosing the Camp In-charge Certificate issued by Sri Ravula Janakiramaiah – camp in-charge of Vatsavai Border Camp. Along with some other petitioners, he filed W.P.No.17148 of 1997 before this Hon'ble Court (in which the petitioner was the fourth petitioner) aggrieved by the action of the respondent No.1 herein in not placing his application before the Screening Committee to consider his case for grant of Freedom Fighters Pension and this Hon'ble Court while disposing the above writ petition on 06-08-1997, directed the respondent herein to place his application before the Screening committee along with other petitioners in that writ petition. In view of the above said direction, the respondent No.1 had placed petitioner's application before the Hyderabad Special Screening

Committee and the above said committee was recommended his case for grant of Freedom Fighters Pension. Therefore, his case along with all recommended cases had been forwarded to the State Government for submission of verification and entitlement reports. Then, the District Revenue Officer/District Nodal Officer, Khammam, had issued Notice Rc.No.C6/800/2001, dated 01-12-2001 directing the petitioner to attend for enquiry on 15-12-2001 along with required documents. Accordingly, the petitioner attended the enquiry and submitted all the required documents and thereupon the Enquiry Officer/District Collector, Khammam, was pleased to recommend petitioner's case for grant of F.F. pension to the State Government and then the State Government had forwarded his enquiry report with a recommendation to the respondent No.1 for grant of F.F. pension. Then, the respondent No.1 was pleased to issue preliminary sanction proceedings on 04-07-2005 directing the petitioner to submit the required descriptive rolls and other documents for issuing final sanction proceedings. Accordingly, the petitioner submitted all the required documents duly attested by the M.R.O. on 16-07-2005. Further it is stated that while things stood thus, surprisingly, the petitioner received the impugned proceedings dated 04-01-2006 from the first respondent rejecting his case for grant of F.F. pension on frivolous and baseless grounds, which is illegal, arbitrary and violative of Articles 14 and 21 of the Constitution of India. It is further stated that in all the cases where the Hyderabad Special Screening Committee had recommended the applications and then a recommendation had been made by the Enquiry Officer

and by the State Government, then the respondent has issued the sanction proceedings granting freedom fighters pension. It is pertinent to submit here that only in the petitioner's case a frivolous and a technical objection had raised and rejected petitioner's case for grant of Freedom Fighter's Pension. The respondent No.1 had failed to exercise his jurisdiction for grant of Freedom Fighters Pension to the petitioner on par with the similarly placed persons. Therefore, the impugned action of the respondent No.1 would amounts to discrimination being violation of Articles 14 and 21 of the Constitution of India.

It is also stated that in the impugned rejection order, the respondent No.1 had taken a technical ground saying that there had been no valid recommendation slip of Hyderabad Special Screening Committee and the consideration itself does not *ipso facto* imply recommendation. In this connection, petitioner respectfully submit that the procedure for placing application before the Special Screening Committee is that the respondent initially verify the application and then the file number would be given and the said application would be included in the list of cases, which is called as Agenda, and would be placed before the Hyderabad Special Screening Committee. Every application would be attached with a covering slip, which would be filled up by the respondents and placed before the screening committee. Then the Members of the Hyderabad Special Screening Committee would consider the application, which had been recommended by the Members and the filled proformate would be signed by the committee members. In petitioner's case, his application had been placed before the Screening Committee in pursuance of

the direction of this Hon'ble Court after duly verifying his application and issuing file No.112/1148/97 and then only the committee had considered his application and recommended for grant of F.F. Pension. It is a duty of the respondent No.1 in filling the proformate, which is now said to be attached to the petitioner's application and signed by the Committee Members. Therefore, petitioner cannot be penalized for the respondents' mistake and the respondents have no jurisdiction to reject his application on technical ground for grant of F.F. Pension. Therefore, the impugned order has been vitiated in the eye of law and hence liable to be set aside.

It is also averred that the second ground taken by the respondent in the impugned rejection order was that the signature of the committee Members had been undated. In this connection, petitioner submits that no recommendation slip had been signed by the committee members with date. The agenda/list of the applications placed before the committee as on that date would be treated that as a date on which the committee members had considered and recommended and therefore such type of technical objection was untenable in the eye of law as held by the Hon'ble Supreme Court. The other objections taken by the respondent No.1 in the impugned rejection order was that one Member had not signed on the recommendation slip. In this connection, petitioner submits that out of 12 members, to his remembrance, 11 members had signed on his recommendation slip i.e., 90% of the committee members had accepted and recommended for grant of F.F. pension to him. Merely not signing the recommendation slip by one member does not amount to non-recommendation and there is no such ruler

to reject his application on that ground. Petitioner respectfully submit that the respondent had included his name in the recommended list for grant of F.F. pension and the same list had been forwarded to the State Government for submission of verification/enquiry report along with other recommended cases and in turn the enquiry authority and the State Government were pleased to recommend his case for grant of F.F. pension. Then, the respondent No.1 was pleased to consider petitioner's verification and entitlement enquiry report and take a decision for grant of F.F. pension to him and therefore, the preliminary sanction proceedings had been issued by the respondent No.1 on 04-07-2005. Accordingly, I had submitted all the required descriptive rolls to the respondent No.1 on 16-07-2005 for grant of F.F. Pension and therefore passing of impugned rejection order on technical grounds at this juncture is illegal, arbitrary and discrimination being violative of Articles 14 and 21 of the Constitution of India. In such circumstances, the petitioner approached this Court by filing the present writ petition.

In the counter-affidavit filed in the background of the case it is stated that in this connection all persons who had taken part in freedom movement in some way or the other are not eligible for Samman Pension under the "Swatantrata Sainik Samman Pension Scheme, 1980" (the scheme). Only specified category of freedom fighters, who fulfill the conditions of the scheme by furnishing the proof of claimed sufferings of the nature and in the manner specified in the Scheme itself are eligible for Samman Pension. Further, it is stated that the claims of Samman Pension can be considered by the Central Government only when they were duly verified and

recommended by the State Governments/U.T. Administrations concerned, provided the report indicates the basis of such recommendations in accordance with the provisions of the Scheme. No action is, therefore, possible on the application sent directly to the Central Government without routing it through the State Government/U.T. Administration concerned. As per the scheme, the verification and recommendation report is mandatory in view of the fact that the documents and other evidence, which substantiate the claims, are in the possession of the State Governments/U.T. Administrations and not of the Central Government. It is also averred that the claims of the persons who applied for pension pertaining to border camps suffering in Hyderabad Liberation Movement have not been accepted initially, as they had not fulfilled the eligibility criteria under the Swatantrata Sainik Samman Pension Scheme. The Central Government constituted a Special Screening in 1983 under the Chairmanship of Shri Govind Bhai Shroff to scrutinize applications of persons who claimed suffering in the border camps during the Hyderabad Liberation Movement spanning the present States of Andhra Pradesh, Karnataka and Maharashtra in the erstwhile State of Hyderabad. Subsequently, it was decided in June, 1985, with the approval of the Cabinet, to treat the sufferings in Border Camps at par with undergone sufferings as defined in the Scheme.

Further it is averred in para 8 that as per the provisions of the Scheme, a person who on account of his participation in freedom struggle remained underground for six months or more is eligible for pension, provided he was;

(i) A proclaimed offender; or

(ii) One on whom an award for arrest or head was announced; or

(iii) One for whose detention, order was issued but not served.

Voluntary underground suffering or self-exile sufferings for party work under command of the party leaders are not covered as eligible suffering for pension under the Scheme.

It is averred in para 9 that the claim of underground suffering is considered subject to furnishing of the following evidences:-

(i) Primary Evidence:

Documentary evidences by way of Court's/Government's orders proclaiming the applicant as an absconder, announcing an award on his head or for his arrest or ordering his detention; or

(ii) Secondary Evidence:

Where records of the relevant period are not available, a Non-availability of Records Certificate (NARC) from the concerned State/Union Territory Administration along with a Personal Knowledge Certificate (PKC) from a prominent freedom fighter who had proved jail suffering of a minimum two years and who happened to be from the same administrative unit.

Further it is stated that the claim of underground suffering is considered on furnishing of the following evidence:

(i) Documentary evidence by way of Court's/Government's orders proclaiming the applicant as

an absconder, announcing an award on his head or for his arrest ordering his detention; or

(ii) Where records of the relevant period are not available, a Non-Availability of Records Certificate (NARC) from the concerned State Government/Union Territory Administration along with a Personal Knowledge Certificate (PKC) from a prominent freedom fighter who had proven jail suffering of a minimum two years and who happened to be from the same administrative unit.

It is also stated that even after the recognition of the Border Camp sufferings in the Hyderabad Liberation Movement to be at par with underground suffering for the purposes of pension under the S.S.S. Pension Scheme, 1980, none of the participants would have qualified for grant of pension as their sufferings could not have been substantiated by the normal evidentiary requirements (primary or secondary) of the S.S.S. Pension Scheme 1980.

It is further averred in para 13 that the Hyderabad Special Screening Committee (headed by Shri Govind Bhai Shroff) had made an extensive tour of the regions comprising the erstwhile state of Hyderabad with regard to various camps from which the armed struggle was waged. It met the concerned officers of the concerned State, prominent workers of the Hyderabad Liberation Movement and other people before preparing the list of the 98 camps (including 41 in Andhra Pradesh, 37 in Maharashtra and 20 in Karnataka) along with the names of the camp-in-charges. Shri Shroff remained the Chairman of the Committee up to December, 1996. Against an estimated number of about 11000 participants of Hyderabad Liberation Movement, the Committee

recommended about 7000 cases during its term, to whom pension was sanctioned. In December, 1996, the Committee was reconstituted under the Chairmanship of Shri N.Giri Prasad, MP (RS). On his death in April, 1997, Shri Ch.Rajeswar Rao, M.L.A., Andhra Pradesh was appointed as Chairman.

It is stated in para 14 that at the instance of Shri C.H.Rajeshwara Rao, ex-Chairman and other ex-Members of the Hyderabad Special Screening Committee, another 18 Border Camps were added (in July 2004) to the list of 98 camps which had been earlier prepared by the Shroff Committee. It is also stated that the last committee headed by Shri Rajeswar Rao scrutinized all the old as well as new cases and recommended about 13500 cases for grant of pension during its term from April, 1997 till May, 1998. After the work of the Committee had been over, it passed a resolution that all eligible cases were considered. No consolidated, authentic Committee Report (indicating the persons considered, the persons recommended and the persons not recommended) was submitted by the committee. In view of number of complaints received against the cases recommended by the committee, it was decided to get their genuineness verified from the State Government. These claims were thereafter processed as per uniform internal guidelines. After receipt of State verification reports, about 3500 cases had already been sanctioned. The substantial requirements in the internal guidelines were the personal knowledge certificates of other freedom fighters and camp-in-charge certificates, which cannot/were not being counter-checked by Government of India. The state of affairs were continuing

till a list of 197 fresh cases, stated to be HSSC-recommended, were received from Shri C.H.Rajeswara Rao, Ex-Chairman of the Hyderabad Special Screening Committee. It was found, after scrutiny of the records that the list was highly questionable and not acceptable. Thereafter, a concerted and continuous exercise was undertaken to make systemic improvements in the whole process of examining HSSC-recommended cases. In that process, prospective systemic improvements and instructions for rule-bound, lawful functioning were *inter alia* issued vide O.Ms. dated 02-06-2005, 23-08-2005, 12-09-2005, 14-11-2005, 28-11-2005, 02-12-2005, 15-12-2005 and 20-12-2005.

It is also stated in para 19 that the gist of these prospective systemic improvements is as under:

a. O.M. dated 02-06-2005 : for proper upkeep of records.

b. O.M. dated 23-08-2005 and O.M. dated 12-09-2005 : that consideration by the HSSC does not *ipso facto* imply recommendation of the HSSC.

c. O.M. dated 14-11-2005 : for rejection orders to be lawful, speaking, self-contained and error-free, and reflecting therein due application of mind.

d. O.M. dated 28-11-2005 and O.M. dated 20-12-2005 : for proper rule-bound scrutiny of all claims, at every possible stage, even after being approved for calling of IDs, and also before issuance of final sanction orders.

e. O.M. dated 02-12-2005 : for blank HSSC-recommendation slips to be dishonoured.

f. O.M. dated 15-12-2005 : for blank HSSC-recommendation slips (with only names and without patrimony/matrimony) to be dishonoured.

It is also stated that no authentic list of Hyderabad Special Screening Committee recommended cases, compiled on the basis of valid Hyderabad Special Screening Committee recommendation slips, was ever prepared/is available (as per available records on date). Further it is stated that one appropriate course of action in this problem was to tabulate and analyze the HSSC-recommendation slips in each case. Sample tabulation and analysis of HSSC-recommendation slips had revealed the following:-

(a) In large number of cases, which have been processed as Hyderabad Special Screening Committee-recommended cases. Hyderabad Special Screening Committee-slips are not available.

(b) In many cases, Hyderabad Special Screening Committee-recommendation slips are blank.

(c) In many cases, the Hyderabad Special Screening Committee slips are blank and contain only the name of the applicant.

(d) In many cases, HSSC-recommendation slips are incomplete in some way or other.

(e) HSSC-recommendation slips complete in all respects had been reported by Sections in only very, very few cases.

Thus, it is seen that:

(i) A large number of slips are totally blank.

(ii) In a large number of slips only the name of the applicant had been given without even indicating the patrimony/matrimony (as also other relevant details).

(iii) In a number of slips, though the name of the

applicant and patrimony/matrimony had been indicated, other details are incomplete.

(iv) Slips (reportedly) complete in all respects had been found only in few cases.

(v) In a large number of cases which had been processed as HSSC – recommended cases, the HSSC-recommendation slips are not available.

It is also averred in paras 23 to 26 as hereunder:

> "There is a significant mismatch about the number of cases recommended by Hyderabad Special Screening Committee. The general institutional impression was that "about 13,500" cases were recommended by the Hyderabad Special Screening Committee. However, the available 'Agenda Folders' contain about 14,100 names. The available lists (in Ministry of Home Affairs) referred to State Governments for verification contain about 14,700 names. Government of Andhra Pradesh alone has communicated that around 15070 cases were referred to them. They type of mismatch is wholly undesirable and unacceptable in a matter which involves burden on the public exchequer and *Samman* to genuine freedom fighters.
>
> It may also be stated that the Government of Andhra Pradesh, on receipt of large-scale complaints, has ordered the State's Vigilance and Enforcement Department to conduct detailed enquiries into the claims of freedom fighters in four districts. These vigilance enquiries were ordered (in July and November, 2005) on complaints like bogus freedom fighters, under-aged persons, bogus date of birth certificates, false certificates in support of claims, etc.
>
> It has been decided on 02-12-2005 that, pending the final findings in these vigilance enquiries, the final sanction of pension in these four districts [Karimnagar, Khammam, Nalgonda and Warangal] may be kept in abeyance.
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> A signed, specific and serious complaint from an ex-LMB Chairman and Ex-Subimalla Taluka Congress Party President, referred to the State Government by MHA, is under enquiry with the Crime Branch, CID, Government of Andhra Pradesh.
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> Report of the State Government is awaited."

Further it is stated in Paragraphs 27 to 32 as hereunder:

> "After discovery of the above facts during an internal investigation, it was decided in January, 2006 that no sanction or approval for calling Identification Documents (IDs) may be given in any case [Court orders (after correct examination) excluded], till (and if) a bona fide and correct course of action is approved at the competent level.
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> It had also come to notice that there were several cases in which contradictory State reports had been received from the State Government. Cases were initially rejected, based on the negative recommendations of the State Government. The same cases were, however, subsequently sanctioned, based on subsequent positive recommendations of the State Government. These fresh reports made no reference to the fact that the same cases had earlier not been recommended for sanction. The Government of Andhra Pradesh has been requested to clarify as to (a) how the cases, which were initially not recommended for sanction, were subsequently recommended for sanction and (b) why no reference was made to the earlier (negative) State reports in the subsequent (positive) State reports, when the same cases were under reference.
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> Reply from the State Government is awaited.
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> In a few instances, where pension had been sanctioned on the basis of State Government's verifications reports, subsequent re-verifications have shown that the claimants were not eligible for pension as they were minors at the time of the movement. One person, on whose certification a case had been (earlier) recommended by the State Government, has, then, stated that he has never issued any certificate to the claimant. These instances have cast a serious doubt on the verification of cases at the end of the State Governments.
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> In view of the foregoing, it has been considered

imperative that a precise and thorough field verification is conducted in order to ascertain the authenticity of each individual case in cooperation with the Government of Andhra Pradesh. This need has arisen primarily on account of gaps in documentation maintained by the Committee and its non-adherence to administrative procedures during the period of its functioning and also during subsequent reconciliation of records in the Ministry.

It has been decided in-principle (on 16-06-2006) that a master list of all the cases referred to the Government of Andhra Pradesh for verification will be prepared by the Ministry and scrutiny of this list will be carried out at the field level jointly in conjunction with the concerned district authorities of the State Governments in order to identify eligible freedom fighters in consonance with the prescribed eligibility criteria. This exercise will be limited to the recommendations made by the Rajeshwar Rao Committee alone and the issue of past sanctions will not be reopened.

Necessary preliminary work for preparing a concrete proposal, for competent approval (i.e., of the Cabinet), is currently being initiated."

In reply to the contentions it is stated that the contention of the petitioner that rejection of his case is illegal, arbitrary or discriminatory is denied. After the systemic improvements detailed in paragraphs 18 and 19 above, all the cases are being processed strictly as per the prescribed policy and in accordance with rule and law on merits. As in the case of the petitioner, all the cases where complete and valid HSSC recommendation slips are not available are now being rejected after due consideration with detailed, reasoned and speaking orders. Further it is averred that the contentions in para 3

are denied and cases of participation in Hyderabad Liberation Movement, duly screened and recommended by the HSSC are to be processed in accordance with the movement specific guidelines. In the absence of any evidence to show that a case was duly recommended by the HSSC, it has to be processed under the normal provisions of the scheme. The petitioner has claimed that his case was considered by the Hyderabad Special Screening Committee (HSSC). However, it is to point out that consideration does not *ipso facto* imply recommendation. In the absence of a valid recommendation slip of the HSSC, it could not be presumed that petitioner's case had been duly recommended by the HSSC. There is no other document on record to fully and duly establish that his case was recommended by the HSSC. Therefore, his case could not be taken to be an HSSC recommended case. The HSSC recommendation slip in the file of the petitioner is blank and can, therefore, not be accepted as a valid HSSC recommended slip. Only the name and father's name had been mentioned. The name of the border camp & certifer, date of receipt of application, age/date of birth, etc., none of essential, basic particulars are mentioned in the slip. None of the columns (which show due chronological filling-up/processing of the HSSC-recommendation slip) had been filled up, and all the columns are blank. The signatures of the Committee

members are undated. One committee member had not signed the slip. Below the signatures, there is an undated handwritten note, which, as discernable to the naked eye, appears to be of one of committee members. It mentions that “applicant’s claim is genuine”. This blank HSSC-recommendation slip does not show the due process of examination and consideration of the claim; it also does not reflect the due recommendation-making process. Therefore, this type of a blank slip is not a valid recommendation slip. Therefore, his case could not be taken to be an HSSC-recommended case. As submitted in paras 30 and 31, modalities for conducting scrutiny of cases referred for verification to the State Government to be carried out at the field level, jointly in conjunction with the concerned district authorities of the State Governments, in order to identify eligible freedom fighters in consonance with the prescribed eligibility criteria, are being processed for approval at competent levels. Thereafter, the petitioner’s case would also be processed like all other similar cases.

Further, in relation to paras 4 and 5, they were denied. It is stated that after the systematic improvements detailed in para 18 and 19 above, all the cases are being processed strictly as per the prescribed policy and in accordance with rule and law on merits. As in the case of the petitioner, all the cases where complete and valid HSSC recommendation slips are not available are now

being rejected after due consideration with detailed, reasoned and speaking orders. In relation to paras 6 and 7, they were denied and it is stated that as submitted in reply to paras 1 to 5 and in the light of submissions in paras 11 to 32, the case of the petitioner had been rightly rejected after due consideration as per rule and law and on merits, as per the uniform policy being followed in all similar cases. The whole policy relating to processing of Hyderabad Liberation Movement cases is based on the fact of a case having been recommended by the HSSC. If there is no valid recommendation slip of the HSSC, the case cannot be said to be HSSC recommended and has to be processed accordingly. The positive recommendation of the HSSC is a fact, which is basic and essential to the processing of the case. The blank slip on the file of the petitioner shows lack of due process and consideration and such a slip is not acceptable as a valid HSSC-recommended policy under the existing guidelines. The case, therefore, had been rightly rejected.

Certain other documents are shown. In the light of the respective stands taken by the parties, this Court is of the considered opinion that the rejection, in the facts and circumstances, cannot be sustained. Hence, the rejection is hereby set aside. Since in the light of the material placed before the Court, the issue may have to be reconsidered and accordingly the Writ Petition is disposed

of directing the respondents to reconsider the whole issue in the light of the material placed before the Court, in the facts and circumstances, within a period of six weeks from the date of receipt of a copy of this order.

The Writ Petition is disposed of accordingly. No order as to costs.

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Justice

P.S.Narayana

Dated 02nd November, 2007

skmr

THE HON'BLE SRI JUSTICE P.S.NARAYANA

W.P.No. 1204 of 2006

Dated: 02nd November, 2007

BETWEEN:

Kilaru Ramaiah

.. Petitioner

And

The Under-Secretary, Govt. of India, Ministry of Home Affairs, Lok Nayak Bhavan, First floor, Khan Market, New Delhi and another

.. Respondents